

No. 9/5/84-Lab/9387.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Sooraj Steel Limited, Industrial Area, Sonapat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 145 of 1980

between

SHRI H. S. AGARWAL, WORKMAN AND THE MANAGEMENT OF M/S SOORAJ STEEL LIMITED, INDUSTRIAL AREA, SONEPAT

Present :—

Shri R. S. Lakra, A.R. for the workman.

Shri Rajinder Singh, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri H.S. Agarwal and the management of M/s Sooraj Steel Limited, Industrial Area, Sonapat, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/SPT/56-80/34711, dated 26th June, 1980 :—

Whether the termination of services of Shri H. S. Agarwal was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed with the respondent since 1st January, 1979 on monthly wages of Rs. 250 and that his services were terminated by the respondent without any lawful excuse on 25th March, 1980 in gross violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, it is alleged that the applicant was appointed on 1st August, 1979 on probation for a period of six months and that since his work and conduct was not satisfactory, his services were dispensed with without any notice and rightly so.

4. In the replication filed by the workman, he has controverted the various pleas taken by the management.

5. On the pleadings of the parties, the following issue was framed on 29th April, 1981 :—

1. Whether the termination of services of Shri H. S. Agarwal was justified and in order ? If not, to what relief is he entitled ?

6. I have heard Shri R. S. Lakra, Authorised Representative of the workman and Shri Rajinder Singh, learned Authorised Representative of the respondent. My findings on the issue framed are as below :—

7. Issue No. 1.—The case of the workman is that he was appointed with the respondent on 1st January, 1979 and that his services were dispensed with unlawfully on 24th March, 1980 without any prior notice or payment of any retrenchment compensation. On the other hand, management alleged that the workman was employed on 1st August, 1979 on probation for a period of six months and that since his work and conduct was not satisfactory, his services were dispensed with on 24th March, 1980. Copy of the order is Exhibit M-4. Exhibit M-1 is the photo copy of the application, upon which appointment of the workman was made. The said application is dated 4th June, 1979. He was appointed with effect from 1st August, 1979 on probation. There is no mention that the probation period was for a period of six months. It seems that the management has suppressed true facts from the Court regarding the date of appointment of the workman, but the management failed, in its efforts to hoodwink the Court as MW-1. Shri Ram Kumar a witness of the management blurted out that prior to the appointment of the workman as Supervisor, he was working as a general clerk with the respondent for the last 5-6 months. That would show that the date of employment given by the workman is more or less correct. So, I find that the workman was employed by the respondent on 1st January, 1979, though, effort was made by the management to hide this fact from the Court. It is not the case of the respondent that the workman was given any notice or retrenchment compensation prior to his termination. The plea of the respondent is that since the workman was on probation and his work and conduct was not satisfactory, so, the management dispensed with his services on 24th March, 1980,—vide letter Exhibit M-4. But since the workman had put in

more than 240 days of service with the respondent on the date his services were terminated, provisions of section 25-F come into full play and the management could not have dispensed with his services without prior notice and payment of retrenchment compensation as envisaged under section 25-F of the Industrial Disputes Act, 1947. So, the order of termination is palpably illegal and cannot be sustained. So, this issue in its entirety goes against the management.

8. In the light of my foregoing discussion, holding the order of termination to be illegal, the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to costs.

Dated, the 19th December, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 145/80/3838, dated the 20th December, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6 Lab./9388.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Sonapat Central Cooperative Bank Ltd., Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 25 of 82.

between

SHRI RAM KISHAN, WORKMAN AND THE MANAGEMENT OF M/S. THE SONEPAT
CENTRAL CO-OPERATIVE BANK LTD., SONEPAT.

Present :—

None, for the workman.

Shri Dharam Vir Rathi, A.R. for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Ram Kishan and the management of M/S. The Sonapat Central Co-operative Bank Ltd., Sonapat, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/SPT/200/81/2509, dated 13th January, 1982.

Whether the termination of services of Shri Ram Kishan was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The workman alleged that he was appointed as Secretary by the respondent on 15th March, 1976 on probation for a period of two years, which he successfully completed but on 20th March, 1978 but his services were terminated by the management without any lawful excuse and in gross violation of the mandatory provisions of section 25F of the Industrial Disputes Act, 1947.

3. In the written statement filed by the respondent, the pleas taken are that the workman was engaged on adhoc basis for a specified period and so his services were lawfully dispensed with after the expiry of fixed tenure and that the reference is bad for non-joinder for proper parties and that the applicant is not a workman as defined in section 2(s) of the Industrial Disputes Act, 1947 and that the reference is bad in law. It is further alleged that during the tenure of his employment the applicant committed acts of misappropriation of the funds. On merits, also the respondent has controverted the claim of the petitioner.

4. In the replication filed by the workman, he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issues were settled on 5th July, 1982 :—

1. Whether the reference is bad in law as per the reasons given in para 1 to 7 of the written statement ?
2. Whether the workman has remained gainfully employed ? If so, to what effect ?
3. Whether the termination of service of Shri Ram Kishan was justified and in order ? If not, to what relief is he entitled ?

6. After the management had gone through the gamut of adducing evidence and case was fixed for evidence of the workman, none appeared for the workman. Earlier Shri S.N. Vats learned Authorised Representative of the workman, who was appearing for him, but today he has stated that he has no instructions to appear, because the workman is not forthcoming to make a statement in the Court or to adduce any evidence in support of his claim. Under the circumstances, the only inference possible is that the workman is not interested in prosecution of the claim and as such his reference is answered and returned accordingly. There is no order as to costs.

Dated the 17th December, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 25/82/3839, dated 20th December, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak

No. 9/5/84-6Lab./9430.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. The Durana Co-operative Credit and Service Society Ltd., P.O. Durana (Ambala) :—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA
AT AMBALA CITY

Reference No. 26 of 1984

SHRI JAISINGH, WORKMAN AND THE MANAGEMENT OF M/S THE DURANA CO-OPERATIVE
CREDIT AND SERVICE SOCIETY LTD., P. O. DURANA (AMBALA).

Present:—

Shri Rajeshwar Nath for the workman.
Shri U. Kant for the Respondent-management.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred,—vide clause (d) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute between Shri Jai Singh, workman and the Management of the Durana Co-operative Credit and Service Society Ltd., P.O. Durana (Ambala). The terms of the reference are as under:—

Whether the termination of services of Shri Jai Singh, workman was justified and in order ? If not to what relief is he entitled to ?

Briefly, narrated the facts of the controversy between the parties as per averments made by them are, as under:—

Shri Jai Singh, workman alleged that he was appointed as Clerk by the respondent society. He joined his duty on 15th July, 1978. He was assigned duties of Saleman,—vide resolution No. 2 of 26th February, 1982. Thereafter, respondent terminated his services on 3rd May, 1982, but the termination order as set aside by the Assistant Registrar, Co-operative Societies, Ambala,—vide order dated 8th May, 1982. Again services of applicant/workman were terminated by the

respondent society,—*vide* resolution No. 4, dated 9th May, 1983 without any notice, without any retrenchment compensation. The order of respondent society is illegal and against the principle of natural justice liable to be set aside and applicant is entitled to re-instatement with continuity of service and full back wages for the period of his forced un-employment.

Respondent society has contested the claim of workman contending that Labour Court has got no jurisdiction to entertain the reference, in question. Applicant is not a workman under the definition of the Industrial Disputes Act, 1947, in the service of the society. It was further contended that the applicant embezzled Rs. 4,915 pertaining to the society due to that fact his services were terminated on 3rd May, 1982. It was further contended that strength of members of the society was diminished. According to that there were—no justification for keeping to Clerk-cum-Salesman. Shri Naib Chand was senior to the applicant who was retained in service while the services of Shri Jai Singh, workman were dispensed with being no longer required. It was further contended that applicant failed to exhaust departmental remedies available to him. Shri Jai Singh sold fertilizers Rs. 5,772.50 on 13th March, 1982 and for Rs 2,185 on 14th March, 1983. He deposited Rs. 5,100 and Rs. 2,150 on 24th March, 1983 after 10 days, Rs. 185 and Rs. 300 were adjusted against his Pay and T.A. While Rs. 22,250 n.p. was deposited by him in cash. It was further contended that since the services of the applicant were surplus so he was legally terminated.

On the pleadings of both the parties the following issues were framed for the just decision of the case:—

Issues:

1. Whether Labour Court has got no jurisdiction to try his ? OPR
2. Whether applicant has got no cause of action, if so, its effect ? OPR
3. Whether orders dated, 3rd May, 1982 and 9th May, 1983 are illegal, void, not binding on applicant regarding termination of his services, if so, its effect ? D.P.A.
4. Relief

I have gone through the evidence adduced on the file and have also heard Shri Rajeshwar Nath for the applicant and Shri U. Kant for the respondent. My issue-wise findings are as under:

Issue No. 1

Much emphasis were laid by Shri U.Kant representative of the respondent that Labour Court has got no jurisdiction to try the disputes in question. He referred to the Haryana Co-operative Societies Act, 1984 its section 128 which bars the jurisdiction of Courts including the Labour Court. I have gone also through section 102 which reads about the dispute which have to be referred to Arbitration for decisions, where it is also laid down that no Courts shall have jurisdiction to entertain any suits or other proceedings in respect of Co-operative Societies and its employees. This provisions finds place in section 102 sub-section (i) clause (b).

There is no dispute about this provisions but the operation of this Act has come into force 11th October, 1984 while the dispute in hands pertains to order, dated 9th May, 1983 in which services of the applicant were terminated. It is settled law that if operation of any Act is to be made from retrospective effect than such an specific clause or provisions has to be added in the Act, itself but no such clause or provisions has been added or brought to my notice by the respondent counsel in the Act in question as mentioned above. So I am of the considered opinion when the Haryana Co-operative Societies Act, 1984 has no retrospective effect so the jurisdiction of the Labour Court to try the dispute in question is not bar. Accordingly this issue is decided in favour of the applicant and against the respondent-management.

Issue No. 2 and 3

Both the issues are inter-linked so taken up for discussion together for discussion.

Applicant has not at all challenged the order dated 3rd May, 1982 because it was set-aside by the Assistant Registrar, Co-op. Societies, Ambala on 8th May, 1982.

The applicant has got only case of action if order dated 9th May, 1983 is found illegal in default of the same in fact he has got no cause of action.

The order of termination of the services of the applicant, dated 9th May, 1983 has been assailed by the applicant on the grounds that no notice regarding the termination of the services, no retrenchment compensation was paid to him.

Statement of Shri Jai Singh, workman reveals that no notice was given to him although it has been affirmed by Shri Sucha Singh. Except their oral statements there is no documentary evidence to prove or disprove this facts. Since cause of proving the dispute of fact notice regarding the termination of services of applicant was given was upon the respondent management but it has failed to established it.

Respondent no where stated that retrenchment compensation was ever awarded to the applicant.

It was admitted by Shri Jai Singh, workman that he sold fertilizer. The sale proceeds were not deposited by him in time. Some of the amount was adjusted by the management against his pay, T.A. and some of the amount was deposited by him in cash.

Copy of resolution of the society Ex. M-9 finds mention that according to Registrar, Co-operative Society Government of Haryana, Chandigarh letter No. Credit BKA-III/11118-73, dated Chandigarh, the 9th March, 1982 if the strength of members of the society is reduced as per requirements in those circumstances only one Clerk-cum-Salesman be kept in employment. Keeping in view the litigation in question the services of the applicant were dispensed with. This copy of resolution also reads that according to circumstances Pay and Commission be given to Shri Jai Singh, applicant. But this pay and commission in other words Retrenchment compensation were never paid to him.

In view of my above discussions I think that the order in question, dated 9th May, 1983 for having not complied with the provisions of Section 25(f) of the Industrial Disputes Act, 1947 is bad in law.

But after going through the service records of the applicant that his services were terminated first of all on 3rd May, 1982 for having embezaled hug amount of the society. He is not entitled to the relief of re-employment retaining in service.

Ld. Counsel for the applicant drawn my attention towards the provisions that subsequent embezzlement should not be kept in view while disposing of reference in question. But I do not want to go into subsequent charges against the applicant which are numourous on the file. I have only made a intention of through charges of embezzlement which were made by him before 9th May, 1983 which are contained in Ex. M-III and IV.

The Directors and the Chairman/President of the soccity as the case may be cannot be expected so well versed regarding the rules and resolutions of the society governing the sources of its employees because they are elected by Boards of the Members and no educational qualifications is required for them. A President or a Director may be an illiterate person.

In view of my above discussion I am of the considered view that the service records of the applicant as well as he being in surplus pool on the day of the termination of his services does not entitled continuity of service from the day of his termination he is only entitled to get one month pay in lieu of not having given notice for that period in other words his services were terminated with immediate effect. He is also entitled to the retrenchment compensation in view of section 25(F) of the Industrial Disputes Act, 1947. Both the issues are decided accordingly.

Issue No. 4

In view of my finds above issues No. 2 and 3 the applicant is entitled to one month notice pay as well as retrenchment compensation. I passed my award regarding the dispute in question accordingly.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Endst. No 935, dated Ambala City 10th December. 1984.

Forwarded (Four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of of the Industrial Disputes Act, 1947.

V. P. CHADHARY,

Presiding Officer,

Labour Court, Ambala